

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 6 of 1998
with
SPECIAL CRIMINAL APPLICATION No. 24 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

SANJEEV RAJENDRABHAI BHATT

Versus

STATE OF GUJARAT

Appearance:

SPECIAL CRIMINAL APPLN. No. 6/98

MR AD SHAH for Petitioner

MR DN PATEL APP for Respondent No. 1

MR KS RATHORE for Respondent No. 3

SPECIAL CRIMINAL APPLN. No. 24/98

MR SK ZAVERI for Petitioner

MR DN PATEL APP for the Respondent-State

MR KS RATHORE for Respondent No.3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/07/98

COMMON JUDGEMENT

Heard learned advocates Mr. A.D Shah, Mr. S.K Zaveri, Mr. K.S Rathore for the respective parties and Mr.D.N Patel, learned APP for the State of Gujarat.

2. Both these petitions arise out of a common cause of action and challenges the same order made by the learned Chief Judicial Magistrate, Pali, Rajasthan on complaint registered before it as C.R No. 403/96. Both the petitions involve identical questions of law and are therefore disposed off by this common judgment.

3. Petitioners in both these petitions are the accused persons in above referred C.R No. 403/96 pending before the learned Chief Judicial Magistrate, Pali, Rajasthan. It appears that the said complaint has been made by one Summersingh Chimansingh, a resident of Pali against one Futermal, a resident of Bijapur, District Pali, Rajasthan, the present two petitioners and several other persons for alleged commission of offence punishable under Sections 120 (B), 195, 196, 342, 347, 368, 458 and 482 of the Indian Penal Code and Section 17, 58 (1) and 58 (2) of the Narcotic Drugs & Psychotropic Substances Act, 1985 {for short, "the NDPS Act"}. The said complaint was presented on 17th October, 1996 before the learned Chief Judicial Magistrate, Pali and on the same day, the learned Magistrate ordered police inquiry to be made in respect of the said complaint under Section 156 (3) of the Code of Criminal Procedure. Pursuant to the said order, the police appears to have investigated into the complaint and an intimation was sent to both the petitioners herein to remain present before the learned Magistrate at Pali on 15th January, 1998. Feeling aggrieved, the present petitions have been preferred under Article 226 of the Constitution of India.

4. Mr. Shah has submitted that the complainant has alleged commission of several offences, particularly one under Section 195 and 196 of the Indian Penal Code and one also under the NDPS Act, 1985. He has submitted that the learned Magistrate has no authority to take cognizance of offence alleged to have been committed under Section 195 and 196 of the Indian Penal Code on a complaint made by a private citizen. He has also submitted that the offence alleged to have been committed under the NDPS Act is exclusive triable by the Special Court established in the area in which the offence is alleged to have been committed. In the instant case, the

said offence is alleged to have been committed at Palanpur in Banaskantha District, Gujarat, and therefore, the learned Magistrate at Pali could not have taken cognizance of the said complaint. He has further submitted that on account of erroneous order made by the learned Magistrate at Pali on 17th October, 1996, the petitioners are called upon to remain present before the learned Magistrate at Pali which necessarily undermines their fundamental right to liberty guaranteed under Article 21 of the Constitution of India. Since both the petitioners reside within the territorial jurisdiction of this Court, this court shall have jurisdiction to examine the correctness or otherwise of the impugned order dated 17th October, 1996. In support of his contentions, he has relied upon the complaint {translation of which is annexed at Annexure "A" to the petition} and also the provisions contained in Section 36-A of the NDPS Act, 1985 and Section 195 of the Code of Criminal Procedure. He has also relied upon judgments of the Supreme Court in the matters of (i) Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Ors., 1995 SCC (Crime) 39; (ii) State of Kerala v. Navab Rajendran & Ors., 1995 All India High Courts 2762; (iii) Manjulaben W/o. Ratilal Dave & Anr., 16 GLR 730; (iv) Dr. S. Dutt v. State of Uttar Pradesh, AIR 1966 SC 523 and (v) State of Uttar Pradesh v. Suresh Chandra Srivastava & Ors., AIR 1984 SC 1108. He has contended that since the learned Magistrate at Pali has no jurisdiction to try the offence alleged to have been committed by the present petitioners, he could not have taken cognizance of such offence and if he could not have taken cognizance of such offence, he could not have ordered police inquiry under Section 156 (3) of the Code of Criminal Procedure as well. Mr. Zaveri has raised the same contentions and has relied upon the very judgments. He has further relied upon the judgments in the matter of K. Veeraswami v. Union of India & Ors., 1993 (3) SCC 655 and in the matter of C. Ravichandran Iyer v. Justice A.M Bhattacharjee & Ors. 1995 (5) SCC 457. He has contended that the petitioner in Special Criminal Application No. 24 of 1998 being a Judicial Officer, no complaint could have been lodged against him without previous consultation with the Chief Justice of India. He has also relied upon the judgment of the Full Bench of the Kerala High Court in the matter of Hareendran v. Sarada, 1995 (4) Crimes 399 and the judgment of the Rajasthan High Court in the matter of Shri Alimuddin v. The State of Rajasthan, 1996 Cr.L.J (Raj) 57. Mr. D.N Patel, the learned APP has emphasized upon several facts and has submitted that complaint lodged against the present petitioners and several others

is not maintainable at all and any order made thereon, therefore, is a nullity and requires to be quashed and set-aside.

5. Mr. K.S Rathore, learned Public Prosecutor has appeared for the State of Rajasthan and has contested these petitions. He has raised a preliminary objection in respect of jurisdiction of this Court to entertain these petitions which are essentially against the order made by the learned Magistrate at Pali, which is situated within the territorial jurisdiction of the Rajasthan High Court. He has also submitted that the petitions are grossly belated in so far as, the petitions preferred in the month of January, 1998 have challenged the order made on 17th October, 1996 i.e., after more than a year and only when they are summoned to remain present before the learned Magistrate, the present petitions have been preferred. He has also argued that in view of the consistent view taken by the Rajasthan High Court, the learned Magistrate at Pali was right in ordering police inquiry under Section 156 (3) of the Code of Criminal Procedure. In support of his contentions, he has relied upon judgments of the Rajasthan High Court in the matters of Alimuddin v. The State of Rajasthan [1991 Cr.L.J (Raj.) 57]; Ram Swaroop v. State of Rajasthan [1991 (2) RLW 79]; and Kedar Nath & Ors. v. The State of Rajasthan [1993 Cr.L.R (Raj.) 613]. He has also relied upon a Division Bench judgment of Kerala High Court in the matter of Soman Pillai v. State [1996 Cri. L.J. 1031] and the judgments of the Supreme Court in the matter of State of Punjab v. Raj Singh & Anr., [1998 AIR SCW 483] and M/s. Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishan now Zila Parishad, Muzaffarnagar, [AIR 1969 SC 356]. He has also relied upon judgments in the matters of State of M.P. & Ors. v. Nandlal Jaiswal & Ors. [AIR 1987 SC 251]; Ramchandra Shankar Deodhar & Ors. The State of Maharashtra & Ors., [AIR 1974 SC 259] and State of H.P. v. Pirthi Chand & Anr., [1996 (2) SCC 37].

6. I shall first deal with the preliminary objection raised by Mr. Rathore. What is challenged before this Court is essentially a judicial order made by the learned Chief Judicial Magistrate at Pali, Rajasthan. The summons served upon the present petitioners are the result of the police investigation made pursuant to the impugned order. I am of the view that no jurisdiction can be conferred upon this Court merely because the petitioners apprehend that their right to liberty guaranteed under Article 21 of the Constitution of India would be jeopardized on account of summons issued upon

them. The order made by the learned Magistrate at Pali is essentially a judicial order made in ordinary course of business and it being situated beyond the limits of territorial jurisdiction of this High Court, this Court shall have no jurisdiction to examine the correctness or otherwise of the said order. The present petitions challenging the order dated 17th October, 1996 made by the learned Chief Judicial Magistrate, Pali are, therefore, in my opinion, not maintainable and both these petitions require to be rejected on that ground alone.

7. Since I have held that this Court has no jurisdiction to entertain these petitions, it would not be expedient for me to express any opinion on the merits of the case and to deal with the contentions raised by the learned advocates, nor shall I deal with the case law cited before me and referred to hereinabove.

8. For the above reasons, both the writ petitions are dismissed in limine. Notice issued in each of these petitions is discharged. At the request of the learned advocates appearing for both the petitioners, the ad-interim relief granted earlier is extended till 17th August, 1998.

Prakash*